IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9817 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Petitioner(s)

Versus

KANTILAL M JOSHI - Respondent(s)

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Appearance :

MR MD PANDYA for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 05/07/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the order dated 30.07.1993 passed by the Labour Court, Bhavnagar in

Reference LCB No.362 of 1990, whereby the said reference was allowed.

2.0 The respondent workman was working as a Conductor with the petitioner Corporation since 1976. On 28.09.1988, since some allegations were made against the respondent, charge-sheet was issued and departmental inquiry was held against him. Pursuant to the departmental inquiry, the respondent was dismissed from service. Feeling aggrieved by the said order, the respondent raised a dispute, which ultimately, came to be referred to the Labour Court by way of a reference. The Labour Court, Bhavnagar, by order dated 30.07.1993, allowed the said reference. Hence, this petition.

3.0 Mr. M D Pandya learned advocate for the petitioner Corporation has contended that the Labour Court has not properly appreciated the principles governing the exercise of powers under Section 11(A) of the Industrial Disputes Act, 1947. He has submitted that the Labour Court, while exercising powers under Section 11(A), has not imposed any penalty while substituting the order of dismissal.

3.1 Mr. Pandya has further submitted that the respondent had committed as many as 72 defaults in the past and that he was also dismissed from service twice. However, only with a view to provide him an opportunity to improve his conduct, the Appellate Authority of the petitioner Corporation had permitted him to continue in service. He has, therefore, submitted that looking to the continuous mis-conduct of the respondent workman, the Labour Court ought not to have allowed the reference.

4.0 I have heard learned counsel for the parties and

perused the documents placed on record. Having gone through the impugned order of the Labour Court, it transpires that the Labour Court has not imposed any penalty, while substituting the order of dismissal. It is required to be noted that the respondent workman was dismissed by the Appellate Authority of the petitioner Corporation on two earlier occasions also, but, only with a view to provide the respondent workman an opportunity to improve his conduct, he was continued in service. In spite of the said opportunities, the respondent workman has not improved his conduct.

4.1 In my opinion, the Labour Court has committed serious error while exercising powers under Section 11(A) of Industrial Disputes Act, 1947. In that view of the matter, the impugned order of the Labour Court, Bhavnagar, is required to be modified.

5.0 For the foregoing reasons, this petition is partly allowed. The impugned order of the Labour Court, Bhavanagar, qua directing the petitioner Corporation to reinstate the respondent workman with continuity in service is confirmed and the remaining part of the order is quashed and set aside. The petitioner Corporation is directed to impose a penalty of stoppage of three increments with future effect on the respondent workman. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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